January 13, 2003

Ms. Larissa T. Roeder
Assistant District Attorney
Dallas County
133 North Industrial Boulevard, LB 19
Dallas, Texas 75207- 4399

OR2003-0260

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174920.

The Dallas County District Attorney's Office (the "DA") received a request for (1) all information relating to the arrest, confinement, investigation, and service to probation for a specified individual as well as (2) the named individual's dates of attendance and release from the SAFP Drug Program. You state that you have no information responsive to the second portion of the request.[1] You state that you do not seek to withhold "front page" information from the information responsive to the first portion of the request. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (cataloguing information considered "front page" information). You claim that the remaining information responsive to the first portion of the request is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note initially that the submitted information consists of completed investigations. Completed investigations are subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) states that a completed report, audit, evaluation, or investigation made

---

[1] We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

of, for, or by a governmental body is not excepted from disclosure unless expressly confidential under other law or as provided by section 552.108. Therefore, we will consider whether the submitted information is subject to "other law" in addition to your argument that the submitted information is excepted from release under section 552.108.

We note that the submitted documents contain medical records that are subject to the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the Occupation Code provides:

> (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

> (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the documents which are medical records subject to the MPA.

Section 552.108 of the Government Code provides in pertinent part:

> (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from required public disclosure] if:

> . . .

> > (4) it is information that:

> > > (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

               (B) reflects the mental impressions or legal
               reasoning of an attorney representing the state
               [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution [is excepted from required public disclosure] if:

. . .

        (3) the internal record or notation:

               (A) is prepared by an attorney representing the
               state in anticipation of or in the course of
               preparing for criminal litigation; or

               (B) reflects the mental impressions or legal
               reasoning of an attorney representing the state.

        (c) This section does not except from [required public disclosure] information
        that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108(a)(4)(A), (b)(3).

You cite to sections 552.108(a)(4) and 552.108(b)(3), and in connection with your assertion of attorney work product, you argue that because the request essentially seeks the DA's entire criminal case file, the information is excepted from disclosure in its entirety pursuant to the holding in *Curry v. Walker,* 873 S.W.2d 379 (Tex. 1994) (discovery request for district attorney's entire litigation file may be denied because decision of what to include in file necessarily reveals prosecutor's mental impressions or legal reasoning). In this instance, we agree that the records request encompasses the prosecutor's entire case file. *Curry* thus provides that the release of the information would reveal the prosecutor's mental impressions or legal reasoning. Accordingly, the DA may withhold the remaining information pursuant to section 552.108(a)(4)(B) and (b)(3)(B) of the Government Code.

In summary, we have marked the medical records that may be released only as provided under the MPA. With the exception of front page information, you may withhold the remaining submitted information in its entirety pursuant to section 552.108 of the Government Code. As section 552.108 is dispositive, we need not consider your remaining arguments against release of the submitted information.

Finally, the DA requests that this office grant a previous determination allowing it to withhold grand jury information, criminal history information, medical records, and biometric identifiers. We refuse your request at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).
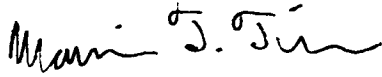
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/sdk

Ref: ID# 174920

Enc: Submitted documents

c: Mr. Alan Bean
        507 North Donley
        Tulia, Texas 79088
        (w/o enclosures)